Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-694

MRS. GRADY E. GUNTHARP, SR.,
Petitioner,

vs.

PLANTERS OIL MILL,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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No constitutional question, if one ever existed, can now be raised since Petitioner failed to assert her alleged rights in the Supreme Court of Mississippi on the first appeal. (Cause No. 50,407, *Mrs. Zora Guntharp, et al. v. Planters Oil Mill, et al.*, 358 So. 2d 397, May 3, 1978, Rehearing denied May 24, 1978). The Court on that appeal awarded Respondent a judgment for exactly $159,408.36 based on an open account, the amount, validity and credits on which account were at issue. The Court then remanded the case with instructions to the lower Court to liquidate insolvent Booneville Grain Company and apply the proceeds of liquidation to that $159,408.36 judgment. Petitioner made no objection whatsoever to this procedure or the amount of judgment or that alleged credits should be applied to that judgment and asked for no clarification or correction of the judgment or the opinion of the Court.

The Petitioner had ample opportunity with her petition for rehearing in the Supreme Court of Mississippi on this first appeal to complain and express her dissatisfaction, if any, as to the amount of the judgment or procedure on remand. She did not do this. While Petitioner did file a petition for rehearing she did not complain that the Court had erred in the amount of the judgment awarded or suggest that it should be adjusted upon remand. Her petition for rehearing in no way requested the Court to require an accounting upon remand of the case and therefore, upon remand, the Chancery Court did exactly what it was instructed to do by the Supreme Court of Mississippi. It liquidated Booneville Grain and applied the proceeds of liquidation to the judgment. It did not require an accounting. It was not told by the Supreme Court to do so.

We have included in the appendix to this reply a complete copy of the petition for rehearing on the first appeal to the Supreme Court of Mississippi which shows the absence of any suggestion by Petitioner that the Court had erred in the amount of judgment awarded or that an accounting should be required upon remand. Petitioner also filed a maximum-length brief in support of this petition for rehearing. This brief neither states nor intimates any dissatisfaction with the amount of the judgment nor does it ask for accounting when the case was remanded. This was the time and the only time for Petitioner to complain and she made no complaint in this regard.

Petitioner claims in her Petition for Certiorari that she was unconstitutionally denied the right to be heard. Her right to be heard was before the Supreme Court of Mississippi on the first appeal and in her petition for rehearing on that appeal. The same alleged credit to which Petitioner refers in her Petition for Certiorari was involved in the first appeal to the Supreme Court of Mississippi. The alleged credit of $33,249.00 was not allowed by the Supreme Court in awarding judgment and the Petitioner made no complaint about this in her petition for rehearing. Had she done so, Respondent could and would have claimed four years of prejudgment interest of over $44,000.00 to which it was entitled; but, since Petitioner did not complain of the amount of the judgment, neither did Respondent, and the judgment became final and neither party thereafter could go behind that judgment as Petitioner sought to do after remand and on her second appeal to the Supreme Court of Mississippi and now seeks to do by this Petition for Certiorari.

It was so obvious that the Petitioner had failed to make timely objection during the first appeal and in her petition for rehearing following that decision, the Supreme Court of Mississippi on the second appeal en banc found that there was no merit in Petitioner's claim that the amount of the judgment was in error or that she could, at that late date, demand an accounting since she had not done so in the previous appeal. (Cause No. 51,271. *Mrs. Grady E. Guntharp, Sr. v. Planters Oil Mill*, 372 So. 2d 1274, May 30, 1979, rehearing denied August 1, 1979).

No constitutional issue is involved. It is simply a case where the Petitioner failed to register her complaint at the proper time in the Supreme Court of Mississippi. We therefore, submit that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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PROOF OF SERVICE

I, John W. Dulaney, Jr., attorney for Planters Oil Mill, Respondent herein, and a member of the Bar of the Supreme Court of the United States, do hereby certify that on the 26th day of November, 1979, I served copies of the above and foregoing Brief in Opposition to Petition for Writ of Certiorari by mailing and depositing same in a United States Post Office or mailbox, with first class postage prepaid, in a duly addressed envelope, to Honorable Roy O. Parker, P.O. Box 92, Tupelo, Mississippi 38801, attorney for Mrs. Grady E. Guntharp, Sr., the Petitioner herein.

It is further certified that all parties required to be served have been served.

This the 26th day of November, 1979.

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Attorney for Planters Oil Mill, Respondent

IN THE SUPREME COURT OF MISSISSIPPI
CAUSE NO. 50,407

MRS. ZORA GUNTHARP AND THE ESTATE OF GRADY E. GUNTHARP, FOR AND IN BEHALF OF BOONEVILLE GRAIN COMPANY, A MISSISSIPPI CORPORATION
APPELLANTS

v.

PLANTERS OIL MILL, A MISSISSIPPI CORPORATION, R. B. FLOWERS, T. G. FLOWERS, JR., HARRY FLOWERS, AND PAUL E. GREGORY, JR.
APPELLEES

PETITION FOR REHEARING

Come now the Appellants, through counsel, and petition this Honorable Court for a rehearing of this cause, and in support hereof would respectfully show the following:

1.

This Honorable Court, under the exceptional circumstances of considering this cause without opinion of the lower court, rendered its opinion on May 3, 1978, granting the relief prayed for by Appellee Planters Oil Mill in its original bill of complaint and denying the relief sought by Appellants in their cross-bill. This cause was remanded to the Chancery Court of Tunica County to effect the liquidation of Booneville Grain Company.

2.

The record of this cause presented to the Court the following undisputed facts:

a. That R. B. Flowers, T. G. Flowers and Harry Flowers are directors, officers and majority stockholders in both Planters Oil Mill and Booneville Grain Company.

b. That during Booneville's fiscal year 1974 Planters Oil Mill, without right by contract or otherwise, appropriated to its own use $365,291.74 realized from the sale of Booneville's soybeans;

c. That R. B. Flowers, as president of Planters and secretary-treasurer of Booneville, directed the appropriation of this money.

Appellants most respectfully suggest that the Court erred in finding that no fraud, mismanagement, waste, or any other act to the detriment of Booneville Grain Company was committed by Appellees.

Respectfully submitted,

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